IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO :22798 of 2006

DATED: 16.11.2006

Between:

M/s. HMT Bearings Ltd
Rep by its Deputy General Manager (HRM)
Sri G R Gaikwad S/o R G Gaikwad,
Aged 49 years, Moulali,
Hyderabad petitioner

And

1.. The Presiding Officer,
Labour Court-I, A.P. , Hyderabad and ano Respondents

THE HON'BLE SRI JUSTICE N.V.RAMANA

Writ Petition Nos. 22798, 22799, 22800, 22802, 22803, 22805, 22806, 22844, 23021, 23023, 23024, 23025, 23026, 23129, 23130, 23269 and 23361 OF 2006

COMMON ORDER:

M/s. HMT Bearings Limited, represented by its Deputy General Manager has filed this batch of writ petitions assailing the common order dated 30.06.2006, passed by the Labour Court, Hyderabad, allowing the petitions in E.P. Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 22 of 2003 in I.D. Nos. 16, 17, 18, 19, 20, 21, 22 23, 24, 25, 26, 27, 28, 29 and 30 of 2000, filed by the respondents-workmen and directing the petitioner-company to re-engage the respondents-workmen in the works notified in Ex.W4-Tender, as illegal and arbitrary.

A few facts necessary to dispose of this batch of writ petitions may be noted and they run thus - The petitioner-company retrenched the services of certain casual non-technical workers. Questioning the retrenchment orders, the respondents-workmen raised industrial disputes in the I.Ds. mentioned above, before the Labour Court-I, Hyderabad. The Labour Court, vide award dated 23.11.2002 dismissed the I.Ds. However, it directed the petitioner-company to follow the provisions of Section 25-G of the Industrial Disputes Act, 1947. The said award attained finality as the respondents-workmen did not assail the same before any higher forum. The respondent-workmen made representation dated 08.04.2003 to the petitioner-company requesting them to implement the award passed by the Labour Court in the I.Ds. As the petitioner-company failed to implement the award passed in the I.Ds., the respondent-workmen filed the afore-mentioned execution petitions contending that the petitioner-company ignoring their claims is engaging juniors and providing them ESI and PF and that it engaged 150 casual workers, and prayed the Labour Court to direct the petitioner-company to re-engage them instead of their juniors. The petitioner-company contested the E.Ps. by filing counter-affidavit *inter alia* contending that the petitioner-company in the month of March, 2003 had reduced its

workers strength to 258 by offering VRS has reduced its workers strength to 258, however, the present staff strength is 385. It further contended that the petitioner-company facing acute financial crisis resulting in huge debts running into crores of rupees. The petitioner-company further contended that the company does not require any additional work force and that no casual labour, much less who are juniors to the respondent-workmen are being engaged in the works hitherto performed by the respondent-workmen. The Labour Court upon considering the rival contentions in the light of the evidence placed on record by the parties, allowed the E.Ps., filed by the respondent-workmen, by reason of the common order dated 30.06.2006 impugned in this batch of writ petitions.

The respondent-workmen filed common counter affidavit *inter alia* stating that the Labour Court while dismissing the I.Ds., has directed the petitioner-company to follow the procedure contemplated under Section 25-G of the Industrial Disputes Act, 1947. The petitioner-company re-engaged the respondent-workmen on 18.12.2003, and dis-engaged them w.e.f. 31.3.2004, without following the procedure contemplated under the Industrial Disputes Act, 1947, and it has resorted to engaging the juniors and fresh candidates. This action of the petitioner-company is an unfair labour practice within the meaning of Section 2(ra) of the Industrial Disputes Act. The petitioner-company has chosen to entrust the works to contractors with a view to deprive the respondent-workmen of their livelihood. The respondent-workmen contended that due to abrupt dis-engagement of their services, they were constrained to file the present execution petitions before the Labour Court, and the Labour Court vide order dated 30.6.2006, allowed the same and directed the petitioner-company to allot the notified works to the respondent-workmen or re-engage the respondent-workmen in the said works or else pay them the wages.

The respondent-workmen further contended that the Labour Court upon considering the documentary evidence, namely Exs.
W-2 to W-5, came to the conclusion that the petitioner-company was extracting the nature of work which the respondent-workmen performed, from the contractors. The respondent-workmen retrenched the workmen under Section 2(OO) of the Industrial Disputes Act, 1947, and as such, they are eligible for re-employment under Section 25-H of the Industrial Disputes Act, 1947. The respondent-workmen state that they are ready to perform the works that are being entrusted by the petitioner-company to the contractor, and contended that the action of the petitioner-company in not considering the cases of the respondent-

workmen for allotment of the notified works, is illegal and arbitrary.

The learned counsel for the petitioner-company submitted that the Labour Court, in fact, dismissed the I.Ds. filed by the respondent-workmen assailing the orders of retrenchment, but however, it directed the petitioner-company to give preference in case of engagement of casual labourers as per the provisions of Section 25-G of the Industrial Disputes Act, 1947. As there is no positive direction granted by the Labour Court in the I.Ds. filed by the respondent-workmen, the Labour Court could not have passed orders in the E.Ps. directing that the respondent-workmen to re-engage the respondent-workmen or pay wages to them in accordance with the Minimum Wages Act. He submitted the Labour Court by directing the petitioner-company to re-engage the respondent-workmen in the E.Ps., in fact, has exceeded its jurisdiction, in that it has passed orders granting relief to the respondent-workmen, which in fact, were not granted by it in the I.Ds., and as such the orders passed in the E.Ps. are liable to be set aside.

He submitted that no person, much less person junior to the respondent-workmen were engaged by the petitioner-company, and as such, the Labour Court committed an error in directing the petitioner-company to re-engage the respondent-workmen, and holding that the petitioner-company has violated the provisions of Section 25-H of the Industrial Disputes Act, 1947 in the matter of re-engaging the respondent-workmen on priority in the works notified under Ex.-W4-Tender. The petitioner company has invited tenders for work contracts for “common line works in Grinding Sections, Shop Planning and Main Stores, Horticulture and House Keeping, Packing of Bearings in Assembly and Data Entry in EDP Sections”, in which category of works, the respondent-workmen cannot be re-engaged. He submitted that the respondent-workmen cannot equate themselves with contract labour engaged through contractors. The works notified in Ex.W4-Tender, are not similar to the works hitherto performed by the respondent-workmen, and as such, they cannot seek re-engagement for performance or allotment of the said works. It is specifically contended that the respondents-workmen cannot claim re-engagement as a matter of right.

He further submitted that even if there is any violation of the procedure contemplated under Section 25-H of the Industrial Disputes Act, 1947 and Rule 77 of the Rules framed thereunder, that by itself does not confer any right on the Labour Court to pass an order granting the relief as sought for in the E.Ps.. He submitted that as per Rule 77 of the Industrial Disputes Rules, the employer is required to maintain a

register and operate a list of workmen in the particular category from which retrenchment is contemplated, and in support of this contention, he placed reliance on the judgments of the apex Court in **State Bank of Bikaner & Jaipur Vs. Omprakash Sharma**[1] and **Regional Manager, SBI vs. Rakesh Kumar Tewari**[2]**.** He further submitted that even if such list is not prepared, yet that does not give right to the respondent-workman to raise an industrial dispute.

On the other hand, the learned counsel for the respondent-workmen submitted that the Labour Court while dismissing the I.Ds. had specifically held that in case any additional employees are required, the petitioner-company shall follow the provisions of Section 25-H of the Industrial Disputes Act, 1947, and the advertisement issued by the petitioner-company inviting tenders clearly shows that there is necessity of engagement of workmen. He further contended that the works, which are now sought to be given to the contractors, are similar to the one performed by the respondent-workmen, and they are ready and willing to perform the said work if they are re-engaged or the said works are allotted to them. It is contended that only with a view to deprive the respondent-workmen of their livelihood, the petitioner-company is resorting to unfair labour practice, by seeking to entrust the works, which were hitherto performed by the respondent-workmen, to contractors. In support of his contention that the retrenched employees are entitled to be re-engaged as per the provisions of Section 25-H of the Industrial Disputes Act, 1947, the learned counsel for the respondent-workmen placed reliance on the judgments of the apex Court in **Central Bank of India vs. S. Satyam & Ors**[3], and **Municipal Corporation of Bilaspur vs. Veer Singh Rajput & Veer Singh Rajput**[4].

Having heard the learned counsel for petitioner-company and the learned counsel for the respondent-workmen, and considering the rival arguments the following two questions arise for consideration, namely:

1. *Whether the works, which the petitioner-company notified for entrustment to contractors, are similar to the works performed by the respondent-workmen before their retrenchment?*
2. *Whether the Labour Court was justified in granting relief to the respondent-workmen in the E.Ps., which in fact, it did not grant in the I.Ds. filed by them?*

In Re Question No. 1:

Admittedly, when the petitioner-company retrenched the respondent-workmen, they filed I.Ds., and the petitioner-company contested the same. The Labour Court upon considering the material placed before it, including the evidence, both oral and documentary, came to the conclusion that the workmen failed to establish that they continuously worked for 240 days and that there was no need to comply with the provisions of Section 25-F of the Industrial Disputes Act, 1947. Holding so, it dismissed the I.D.s, however, it directed that in case there is any need to engage workers the petitioner-company shall follow the provisions of Section 25-G of the Industrial Disputes Act, 1947. The relevant portion of the award, of the labour Court, as discussed in I.D. No. 24 of 2000, may be noted for proper appreciation, and it reads as under:

> Petitioner himself examined as WW1. He stated that he had no document except Ex.W1 and 2 to show that he worked continuously from 1984 to 1999.
>
> Ex.W2 is only E.S.I Card. Ex.W1 comprises gate passes for the period from 27.8.99 to 26.9.99, 24.5.99 to 30.6.99, 3.7.99 to 7.8.99, evidently these Ex.W1 and W2 do not disclose that the petitioner worked for 240 days. Issue of gate passes for short spells or for one month period with time gaps. Though petitioner alleged to have been working since 1985, these 3 gate passes relate to 1999. They do not disclose that the petitioner worked for 240 days.
>
> Thus, the documentary evidence placed by the petitioner does not establish that he worked for 240 days in any calender year. It does not show that the petitioner worked continuously for 240 days immediately preceding the date of his termination.
>
> Ex.W3 and W4 Xerox copy of minutes of conciliation proceedings or the Xerox copy of representation for the petitioner cannot establish that the petitioner worked for 240 days.
>
> .....
>
> In the light of these facts, I hold that the petitioner failed to establish that he worked continuously for 240 days. Consequently there is no need of compliance of Section 25 F of I.D.Act.
>
> .....
>
> In the result, this petition is dismissed but in the circumstances without costs. **However, if the respondent is in need of additional employees it should follow Sec 25-G of the I.D. Act.** This award is passed accordingly. This award does not prohibit petitioner to get ESI benefits for service period if entitled to as he is ESI card holder.

Based on the above highlighted observation that "if the respondent (petitioner) is in need of additional employees it should follow Section 25-G of the Industrial Disputes Act, 1947", the respondent-workmen filed the present execution petitions before the

Labour Court, *inter alia* contending that petitioner-company has issued advertisement calling for tenders for entrustment of certain works on contract basis, which were hitherto performed by them, and as such, the said advertisements are illegal, and prayed that the petitioner-company be directed to give preference in the matter of re-engagement for the works notified in terms of the orders of the Labour Court. The respondent-company contested the execution petitions. However, the Labour Court by reason of the orders impugned in the present writ petition, allowed the E.Ps. *inter alia* holding as follows:

> For all the above categories of works petitioners are eligible as they are non-technical persons. However, the respondent ignoring the past experience and the seniority of the petitioners proceeded to appoint contract workers on production by calling tenders. This attitude of the respondent apparently shows that the respondent has not followed Section 25-H of the Industrial Disputes Act. The petitioners who had already put in service for a considerable time of 3,3,2,2,9,2,1,13,11,18,1,1,18,2,4 years respectively are entitled to be reemployed by giving preference over new employees.
>
> .....
>
> In the aforesaid circumstances, I am of the view that the respondent has violated section 25-H to provide an opportunity to the petitioner to re-engage them on a priority basis. Accordingly, I hold on the point that all the petitioners are entitled to re-engagement in pursuance of the award in I.D. 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30 and 22 of 2000.
>
> In the result this petition is allowed, respondent is directed to re-engage the petitioners for the works notified in Ex.W-4 tender called for within one month from the date of this order, failing which the petitioner is entitled for wages in accordance with the minimum wages Act from the date of this order till they are re-engaged. Accordingly, EPs are closed.

Admittedly, the respondent-workmen have neither placed any material nor adduced any evidence to show that the works which the petitioner notified for entrustment to contractors are similar to the one, performed by the respondent-workmen before their retrenchment from employment. Though the respondent-workmen did not place any material or evidence to show that the works notified by the petitioner-company are similar to the one notified performed by them before their retrenchment from employment, yet the Labour Court placing reliance on Ex. W4-Tender, came to the conclusion that as the respondent-workmen are non-technical persons they are eligible for the works notified. This finding of the Labour Court is based on no evidence. Before recording such a finding, the Labour Court ought to have satisfied for itself as to whether the works notified by the petitioner-company for entrustment to the contractors, were similar to the one performed by the respondent-workmen their retrenchment from

employment, and more so when it was the specific case of the petitioner-company that the works notified by them are not similar to the works which were performed by the respondent-workmen before their retrenchment from employment. Since the finding of the Labour Court that as the respondent-workmen are non-technical persons they are eligible to be engaged for the works notified for entrustment to the contractor, is based on no evidence, the consequential directions made by it directing the petitioner-company to re-engage the petitioner-workmen in the notified works or pay them minimum wages is without any basis, and more so when the I.Ds., filed by them were dismissed. The engagement of respondent-workmen for certain period after dismissal of the I.Ds. and during the pendency of the E.Ps. by itself does not give them any right to seek their engagement in the works notified for entrustment to contractors, and more so when they failed to prove that the works notified by the petitioner-company were similar to the works, performed by them prior to their retrenchment. In that view of the matter, it has to be held that the works notified by the petitioner-company for entrustment to contractors, are not similar to the works performed by the respondent-workmen before they were retrenched from employment.

In Re Question No. 2

As can be seen from the award passed in the I.Ds., the Labour Court found that the respondent-workmen failed to establish that they worked continuously for 240 days, and as such, it held that there was no need to comply with the provisions of Section 25-F of the I.D. Act, and holding so, it dismissed the I.Ds., however, it observed that if the respondent is in need of additional employees, it should follow Section 25-G of the I.D. Act. Though the Labour Court has not given any positive direction in the I.Ds. to the petitioner-company to re-engage the respondent-workmen, yet in the E.Ps. filed by the respondent-workmen, while allowing the E.Ps. it directed the petitioner-company to re-engage the respondent-workmen for the works notified in Ex. W-4-tender called for within one month from the date of the order, failing which the petitioner is entitled for wages in accordance with the Minimum Wages Act from the date of the order till they are re-engaged. This direction of the Labour Court in the E.Ps. certainly transcends the order passed by it in the I.Ds., and more so when the respondent-workmen failed to prove that the petitioner-company had engaged persons, who are junior to them, and more so, when it is the specific case of the petitioner-company that they had taken a policy decision to entrust certain works to contractors. The Labour Court

could not have granted the reliefs in the E.Ps., which it did not grant in the main I.Ds. In that view of the matter, the directions made by the Labour Court in the E.Ps., directing the petitioner-company to re-engage the respondent-workmen, and in the event of failure to do so, to pay them wages in accordance with the provisions of the Minimum Wages Act, is illegal, for the said direction, surpasses the relief granted in the I.Ds. Accordingly, Question No.2 is answered in favour of the petitioner-company and against the respondent-workmen.

Accordingly, the writ petitions are allowed, and the common impugned order passed by the Labour Court in the E.Ps. is set aside. No costs.

_____

N.V.RAMANA,J

DATE: 16.11.2006
TVK

THE HON'BLE SRI JUSTICE N.V.RAMANA

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

WRIT PETITION NOs. 22798, 22799, 22800, 22802, 22803, 22805, 22806, 22844, 23021, 23023, 23024, 23025, 23026, 23129, 23130, 23269 and 23361 OF 2006

DATE: 16.11.2006

---

[1] 2006 (109) FLR 1203

[2] 2006 (1) SCC 530

[3] 1996 (2) LLJ 820

[4] 1998 (2) LLJ 627 (SC)